

HONORABLE RONALD B. LEIGHTON

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

UNITED TRANSPORTATION UNION,  
AND THOMAS KITE,

Plaintiffs,

v.

BNSF RAILWAY COMPANY,

Defendant.

CASE NO. C10-5808 RBL

ORDER DENYING MOTION FOR  
SUMMARY JUDGMENT

[Dkt. #s 81, 89, 91]

THIS MATTER is before the Court on Plaintiff Kite's Motion for Summary Judgment [Dkt. #81] on two issues: vacation of Zimmerman's 2009 Order of Dismissal without prejudice, and vacation of Peterson's 2010 arbitration award. Kite claims that there are no material issues of fact and that he is entitled to judgment as a matter of law on each claim.

BNSF argues that the Motion relies on arguments and legal theories that are a far cry from those made previously over the more than 5 year history of this case. Kite originally claimed that the arbitration result was the result of extortion, but that, in the absence of evidence supporting that claim they now seek summary judgment on four different theories: (1) Arbitrator Zimmerman should not have recused herself at all, but was bound to decide the case on the merits; (2) Boldra fraudulently managed to get the Kite case transferred to a different

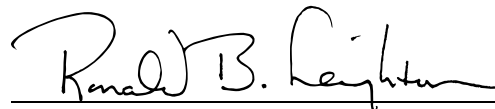
1 (Peterson's) Public Law Board; (3) Peterson relied on improper evidence; and (4) the arbitrators  
2 failed to address procedural objections. It argues that none of these claims amount to the sort of  
3 fraud required to overturn an arbitration decision under the RLA, and certainly not on Summary  
4 Judgment.

5 Kite also asks the Court to Strike [Dkt. #89] the Declaration of Roger Boldra as  
6 inconsistent with his deposition and his emails in evidence, and BNSF asks [Dkt. #91] the Court  
7 to strike what it claims is a new argument about the timeliness of the underlying arbitration  
8 award, raised for the first time in Kite's Reply Brief [Dkt. #87].

9 The Motion for Summary Judgment depends on factual determinations that cannot be  
10 made on summary judgment. It is DENIED. The Motion to Strike [Dkt. #89] is similarly  
11 DENIED, as it is a factual dispute best resolved at trial, on cross examination. BNSF's Motion  
12 to Strike [Dkt. #91] is DENIED as moot.

13 IT IS SO ORDERED.

14 Dated this 22<sup>nd</sup> day of July, 2015.

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17 Ronald B. Leighton  
18 United States District Judge  
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